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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 74-1532

FRANCIS M. COCKE, Petitioner,

v.

IRWIN S. CANTOR, et al, Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Eino M. Jacobson
Francis J. Donofrio

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FRANCIS M. COCKE, Petitioner,

v.

IRWIN S. CANTOR, EINO M. JACOBSON, FRANCIS J. DONOFRIO, WALLACE O. TANNER, HUBERT KELLY, STEVEN H. SCHNEIDER, LORETTA S. WHITNEY, POWELL B. GILLENWATER, TRANSAMERICA TITLE INSURANCE COMPANY, TITLE INSURANCE COMPANY OF MINNESOTA, JAMES STEWART COMPANY and M. SETH HORNE and MAURINE D. HORNE, his wife, JOAN H. COCKE, and ARLEIGH H. BURTON, Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner brought a complaint in the Federal District Court attempting to state a cause of action against respondents under the Civil Rights Act. The complaint was clearly a collateral attack upon judgments and orders entered against petitioner in a civil action in the Arizona State Courts. The respondent Judges Cantor, Jacobson and Donofrio, filed a motion to dismiss on the grounds that the Federal District Court was without subject matter jurisdiction, that the State Judges who had acted in their official capacity were immune from monetary damages under the Civil Rights Act and that the complaint failed to state a claim upon which relief could be granted. In the District Court Memorandum Decision and Order which issued March 4, 1974 (Volume II, Appendix to Petition for writ of certiorari, p. 157), the Court denied the motion to dismiss for lack of subject matter jurisdiction, proceeded to the merits of petitioner's

complaint and found it failed to "demonstrate that the defendants used the courts unequally against him, or that the process was a sham, or that any significant right was denied him without legal justification." The motion to dismiss for failure to state a claim upon which relief could be granted and the motion to dismiss on the grounds of judicial immunity were granted. The judgment of the District Court issued that same date dismissing plaintiff's complaint. On appeal to the Ninth Circuit the Court of Appeals affirmed the District Court Judgment on the grounds that the complaint failed to assert a claim upon which relief could be granted.

In requesting this Court to review on writ of certiorari, the petitioner urges the following as reasons for granting the writ:

1. That the Civil Rights Act, 42 U.S.C. §§ 1981-1988 permits a Federal Court to use state

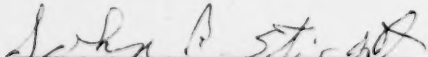
court judgments entered in violation of petitioner's right to due process of law.

2. At least with respect to equitable relief, the doctrine of judicial immunity should not restrict actions under the Civil Rights Act.

Neither of these grounds are viable under the posture of this case. First, the Federal District Court rejected the respondents' argument that the District Court was without subject matter jurisdiction and did in fact review the state court judgments to determine whether they had been entered in violation of petitioner's right to due process of law. Second, the respondent judges did not argue in their motion to dismiss in the District Court nor in their motion to affirm in the Ninth Circuit Court of Appeals that the doctrine of judicial immunity extended to equitable relief under the Civil Rights Act. Their position was that because they acted in

their official capacity they were immune from monetary damages. Thus, petitioner's asserted reasons for granting a writ of certiorari under Rule 19(1)(b), Rules of the United States Supreme Court, are frivolous. In addition, the case does not warrant review by this Court as to any substantive matter. The case is clearly one of a disgruntled state court litigant who has attempted to have the state court judgments reviewed collaterally in the Federal Courts. For these reasons the respondents request that the petition for writ of certiorari be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 22 day of July, 1975, three copies of the Response to Petition for Writ of Certiorari were mailed, postage prepaid, to the following attorneys. I further certify that all parties required to be served have been served.

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